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No. 1315 (11)

Supreme Court of the United States.

OCTOBER TERM, 1944.

IN THE MATTER OF

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, DEBTOR.

THE COMMONWEALTH OF MASSACHUSETTS,
THE CITY OF BOSTON,
WEBSTER AND ATLAS NATIONAL BANK OF BOSTON, TRUSTEE,
THE MUTUAL SAVINGS BANK GROUP COMMITTEE FOR BOSTON TERMINAL COMPANY BONDS,
Petitioners.

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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Supreme Court of the United States.

October Term, 1944.

In the Matter of

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, Debtor.

THE COMMONWEALTH OF MASSACHUSETTS,

THE CITY OF BOSTON,

WEBSTER AND ATLAS NATIONAL BANK OF BOSTON, Trustee,

THE MUTUAL SAVINGS BANK GROUP COMMITTEE FOR BOSTON TERMINAL COMPANY BONDS,

Petitioners.

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Commonwealth of Massachusetts, in this matter gravely affecting its sovereignty, in relation to the first eleven questions presented by the petition, respectfully submits the following:

I.

The questions presented arise under Section 77 of the U.S. Bankruptcy Act (11 U.S.C. § 205), particularly subdivision (b), relative to the formulation of plans of reorganization, and subdivision (f), relative to carrying out of such plans after confirmation.

The pertinent language of subdivisions (b) and (f) reads as follows, with emphasis supplied:

> "(b) A plan of reorganization . . . (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, *the amendment of the charter of the debtor*, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole

or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section."

"(f) . . . Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, *the laws of any State or the decision or order of any State authority to the contrary notwithstanding.*

II.

The foregoing provisions were held by the Circuit Court of Appeals to authorize the plan, *ex proprio vigore*, to abrogate the provisions of chapter 516 of the Massachusetts act of 1896,[1] requiring the New York, New Haven and Hartford Railroad and the Old Colony Railroad to use the South Station for all of their terminal passenger business in Boston, and other statutory provisions requiring those railroads to maintain passenger stations and service in Massachusetts, especially Massachusetts General Laws, c. 160, §§ 128, 129[2]; at the same time preserving to said railroads the right to operate passenger service elsewhere in the Commonwealth and freight service on the very lines

[1] Appears in appendix to petition, pp. 51-67.

[2] Said sections read as follows:

"SECTION 128. A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station, unless it is relocated under the following section, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the

on which passenger service is abandoned, as well as elsewhere in the Commonwealth.

Subdivision (b), clause (5), was inserted by the amendment of August 27, 1935, c. 774, 49 Stat. 911. In the original act of 1933, 47 Stat. 1474, first inserting § 77 in the Bankruptcy Act, clause (5) appeared as clause (3) of said subsection. Most of the provisions of clause (5) appeared in said clause (3), but the words "the amendment of the charter of the debtor" were inserted by the act of 1935.

Subdivision (f) replaces in substance the provisions of subdivision (h) of § 77 as they appeared in the original act of 1933. The underlined provisions contain the only language relied upon to support the construction of § 77 as authorizing the abrogation of state laws by a plan of reorganization *ex proprio vigore*.

The words in subdivision (b) "the amendment of the charter of the debtor" would not ordinarily be construed as referring to such exercises of the police power as Massa-

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written approval of the department after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

"SECTION 129. A railroad corporation may relocate passenger stations and freight depots, with the written approval of the department and of the board of aldermen of the city or the selectmen of the town where such stations or depots are situated."

These sections also appear in appendix to petition, pp. 50-51.

That the foregoing provisions are regarded by the legislature of Massachusetts as still in force is shown by Massachusetts General Laws, c. 159, § 16A, inserted by Chapter 243 of the Acts of 1938, as follows:

"SECTION 16A. The department before authorizing any railroad to discontinue or abandon any of its lines, stations or other service, may consider, in addition to other facts, the revenues of said railroad from all sources."

This section also appears in appendix to petition, p. 50.

chusetts General Laws, c. 159, §§ 16[3], 16A, and c. 160, §§ 128, 129, as part of the charter of the debtor. And it would require a broad construction of them to include as part of the *charter* chapter 516 of the Acts of 1896.

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[3] The first few lines of General Laws, c. 159, § 16, contain a broad grant of power to the Massachusetts Department of Public Utilities. This section reads as follows:

> "SECTION 16. If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees."

This section also appears in appendix to petition, pp. 49-50.

Also, these words are not inconsistent with an intention that application be made to the state legislature to amend the charter of the debtor in a case where such amendment was deemed advisable.

As to the words in subdivision (f), "the laws of any state or the decision or order of any state authority to the contrary notwithstanding," it must be remembered that subdivision (f) relates only to the operation of a plan already confirmed. Subdivision (b), not (f), is the one which states what the plan may contain.

Subdivision (b) states that a plan may authorize the issue of securities. It may well be that under subdivision (f) securities might be issued exempt from the laws of any state or the supervision of any state tribunal; but this would not justify the abrogation of laws relating to passenger stations or orders of the Department of Public Utilities relative to passenger service. As suggested on page 25 of the petition, it would not authorize the abrogation of statutes relative to the abolition of grade crossings or the taxation of railroad corporations.

III.

To give to subdivisions (b) and (f) the construction given them by the Circuit Court of Appeals would violate the established principle that the intention of Congress to exclude states from exercising their police power must be clearly manifested. It is not necessary to cite again the authorities in support of this proposition quoted in the text and cited in the notes on page 24 of the petition.

Furthermore, the National Bankruptcy Act is primarily an act to relieve debtors while protecting so far as possible the rights of creditors. It should not lightly be construed as an act taking away the regulatory powers of state legislatures and state administrative bodies over railroads, and

giving them to a District Court of the United States, sitting in bankruptcy, as is done if that court is authorized to approve a plan which abrogates state laws.

Also the reliance placed by the Circuit Court of Appeals upon certain dicta in the case of *Palmer* v. *Massachusetts*, 308 U.S. 79, at pages 88 and 89, indicates that this Court, and not the Circuit Court of Appeals, should finally decide the issues directly raised in this case.

IV.

In view, therefore, of the novelty of the statutory construction enunciated by the Circuit Court of Appeals and necessary to support its decision, the reliance by that court upon dicta of this Honorable Court in a case in which the issue was not directly raised, the doubtfulness of the construction reached, the fundamental principles of statutory construction which are ignored in reaching it, and the importance to this Commonwealth and other states of the decision of the Circuit Court of Appeals as affecting their sovereignty, it is respectfully submitted that this Honorable Court should grant the petition and itself hear and decide the questions of law involved.

Respectfully submitted,

THE COMMONWEALTH OF MASSACHUSETTS,

By its Attorneys,

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